

KEYWORD: Foreign Influence

DIGEST: Although the political situation in Burma (Myanmar) placed Applicant at heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of his limited family connections there, he mitigated the security concerns by demonstrating that he was unlikely to have to choose between his family interests and the interests of the U.S. Clearance granted.

CASENO: 06-24781.h1

DATE: 08/30/2007

DATE: August 30, 2007

In Re:	)	
	)	
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SSN: -----	)	ISCR Case No. 06-24781
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Emilio Jaksetic, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_ Although the political situation in Burma (Myanmar) placed Applicant at heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of his limited family

connections there, he mitigated the security concerns by demonstrating that he was unlikely to have to choose between his family interests and the interests of the U.S. Clearance granted.

### **STATEMENT OF THE CASE**

Applicant challenges the 8 April 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of foreign influence concerns.<sup>1</sup> He answered the SOR 2 May 2007, and requested a hearing. DOHA assigned the case to me 20 June 2007 and I convened a hearing 27 July 2007. DOHA received the transcript (Tr.) 8 August 2007.

### **FINDINGS OF FACT**

Applicant admitted the allegations of the SOR. Accordingly, I incorporate those admissions as findings of fact.

Applicant is a 40-year-old quality assurance manager, employed by a defense contractor since September 1999. He has not previously held a clearance.

Applicant was born in Burma (Myanmar) in December 1966. He came to the U.S. with his family in May 1979, when his father was appointed an executive director of the World Bank. He became a legal permanent resident (LPR) of the U.S. in 1990, and a naturalized U.S. citizen in October 1998. He obtained his U.S. passport in November 2001. He has not had a Burmese passport since before October 1998. Applicant attended schools in the U.S. from seventh grade on. He obtained an undergraduate degree in electrical engineering from a U.S. university, and earned a master's degree in business administration from a different U.S. university in June 2003.

In December 1997, Applicant married a Thai native he met in the U.S. She became a naturalized U.S. citizen with him in October 1998. They have three children, all native-born U.S. citizens. Applicant is a registered voter in the state where he resides (A.E. C). All his financial assets are in the U.S. He has substantial sums in his retirement accounts as well as two \$529 state college savings plan accounts he opened for his two oldest children (A.E. B). He has no financial interests in Burma.

Applicant traveled to Burma in December 2004 to visit his family, and while there learned of medical issues confronting both parents. He returned to Burma in March 2005 to escort his mother (now 80 years old) and father (now 76 years old) to the U.S. for medical treatment. When in Burma, Applicant stays with his parents. He accompanied his parents back to Burma in 2006.

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<sup>1</sup>Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated 2 January 1992, as amended and revised—most recently in August 2006 (Directive).

Applicant's parents and three siblings are resident citizens of Burma. His father was an executive director of the World Bank from 1979 until his retirement in 1992. As such, he wore three hats. He was responsible to the bank, a non-governmental organization (NGO), the government of Burma, and the South-east Asia nations assigned to his region (Tr. 35-36). Notwithstanding this divided responsibility, his retirement pension is paid by the World Bank. Before moving to the U.S. with her family in 1979, Applicant's mother was a middle school principal—a position that nominally made her an employee of the Burmese government. However, she retired from that position in 1979, and although she earned a pension from that position, she does not collect it because the pension is less than the cost of traveling to the bank where she is required to collect it.

One of Applicant's brothers is an airline pilot for a commercial airline in Burma, although he had previously been employed by the state-owned airline. The other brother is mentally challenged, does not work, and lives with his brother in Burma. Applicant's sister is a doctor in a private clinic. Applicant's contacts with his siblings are casual and infrequent. None of Applicant's siblings have any affiliation with the Burmese government.

Applicant's program manager for the last seven years—a retired career member of the U.S. Army—praises Applicant's work performance and integrity, and has no reservations about Applicant holding a clearance (A.E. A).

Burma is a former British colony currently ruled by a military junta. U.S.–Burma relations are strained. The government has an extremely poor human rights record, and is subject to a range of trade sanctions by the U.S. The government strictly controls travel to, from, and within Burma, and monitors the movements of foreign travelers staying in commercial establishments. U.S. citizens involved with Burmese pro-democracy leaders have been detained, arrested, tried, and deported—and are now subject to jail. Nevertheless, Burma is not a known collector of U.S. intelligence or sensitive economic information. Burma is not known to target U.S. citizens to obtain protected information.

### **POLICIES AND BURDENS**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline B (Foreign Influence).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute,

extenuate, or mitigate the government’s case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an Applicant’s suitability for access in favor of the government.<sup>2</sup>

## CONCLUSIONS

Under Guideline B (Foreign Influence), an applicant’s foreign contacts and interests may raise security concerns if the individual 1) has divided loyalties or foreign financial interests, 2) may be manipulated or induced to help a foreign person, group, organization, or government in a way contrary to U.S. interests, or 3) is vulnerable to pressure or coercion by any foreign interest. Foreign influence adjudications can and should consider the identity of the foreign country in which the foreign contact or financial interest is located—including, but not limited to, whether the country is known to target U.S. citizens to obtain protected information and/or is associated with a risk of terrorism.<sup>3</sup> Evaluation of an individual’s qualifications for access to protected information requires careful assessment of both the foreign entity’s willingness and ability to target protected information, and to target ex-patriots who are U.S. citizens to obtain that information, and the individual’s susceptibility to influence, whether negative or positive. More specifically, an individual’s contacts with foreign family members (or other foreign entities or persons) raise security concerns only if those contacts create a heightened risk or foreign exploitation, inducement, manipulation, pressure, or coercion.<sup>4</sup>

In this case, the government established a case for disqualification under Guideline B. Considering first the foreign country involved, Burma and the U.S. enjoy strained foreign relations. The government represses pro-democracy movements in Burma, and monitors foreign travelers, especially those involved in pro-democracy activities. However, in order for Applicant’s family members to be in a position to be used as a pressure point on Applicant—whether benign or malevolent—there must be a government or other entity ready, willing, and able to collect protected information and use it. Burma is not known to target protected U.S. information, nor is it known to target U.S. citizens to obtain protected information. The government’s focus appears to be on suppressing internal opposition to the ruling junta. Nevertheless, the extent of government surveillance poses some risk that Burma might seek protected information from Applicant.

However, examining Applicant’s personal circumstances, whatever the heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion because of his limited family

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>Revised Adjudicative Guidelines, ¶ 6.

<sup>4</sup>Revised Adjudicative Guidelines, ¶ 7.(a).

contacts in Burma, Applicant has mitigated the security concerns.<sup>5</sup> His main contacts in Burma have been with his parents, and have been related to their medical issues. There is no evidence that Applicant or his family members have been involved with pro-democracy groups in Burma, the main focus of the Burmese government. Further, it does not appear that Applicant stayed in commercial accommodations while traveling to Burma, lowering the likelihood that he was monitored. In addition, Applicant's financial and personal ties to the U.S. are so substantial, when balanced against having no financial interests in Burma, that he can be expected to place U.S. interests over any the Burmese government might bring to bear. I resolve Guideline B for Applicant.

**FORMAL FINDINGS**

Paragraph 1. Guideline B: FOR THE APPLICANT

Subparagraph a:	For the Applicant
Subparagraph b:	For the Applicant
Subparagraph c:	For the Applicant
Subparagraph d:	For the Applicant
Subparagraph e:	For the Applicant
Subparagraph f:	For the Applicant

**DECISION**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

**John G. Metz, Jr.  
Administrative Judge**

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<sup>5</sup>Revised Adjudicative Guidelines, ¶ 8.(a) the nature of the relationships with foreign persons, . . . or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the U.S.